



## TITLE 13

### Domestic Relations

#### CHAPTER 24. THIRD-PARTY VISITATION

##### Subchapter I. General Provisions

###### § 2401. Intent and purpose.

(a) The General Assembly hereby declares that there is a need for a clear statutory framework for the proper procedures and requirements for visitation between children and persons other than their parents. The General Assembly further declares that, with the exception of Department of Services for Children, Youth and their Families (DSCYF), guardianship as set forth in Chapter 23 of this title is the appropriate legal authority for persons who wish to pursue legal custodial and guardianship rights over a child for which they are not the parent.

(b) This chapter shall be liberally construed so that these purposes may be realized. To that extent, modification of any orders pertaining to visitation involving persons other than parents that were entered under previous versions of the Code shall now be considered under this chapter. Modification of any orders pertaining to custody involving persons other than parents that were entered under previous versions of the Code shall now be considered under Chapter 23 of this title.

###### § 2402. Definitions.

For the purposes of this chapter, unless the context indicates differently:

- (1) "Abuse" or "abused child" is as defined in § 901 of Title 10.
- (2) "Adult" is as defined in § 901 of Title 10.
- (3) "Best interests" is determined in accordance with § 722 of this title.
- (4) "Child" is as defined in § 901 of Title 10.
- (5) "Court" or "court" is as defined in § 901 of Title 10.
- (6) "Department" or "DSCYF" is as defined in § 901 of Title 10.
- (7) "Dependency" or "dependent child" is as defined in § 901 of Title 10.
- (8) "Guardian" is as defined in § 2302 of this title.
- (9) "Guardian ad litem" is as defined in § 2302 of this title.
- (10) "Licensed agency" is as defined in § 901 of this title.

(11) "Neglect" or "neglected child" is as defined in § 901 of Title 10.

(12) "Parent" is as defined in § 2302 of this title.

(13) "Relative" is as defined in § 901 of Title 10.

#### **§ 2403. Jurisdiction and venue.**

(a) The Family Court shall have jurisdiction over proceedings under this chapter to grant, modify and/or terminate third-party visitation orders.

(b) A petition for third-party visitation under this chapter may be filed in the Family Court of any of the following counties:

(1) The county in which the organization or persons, having legal or physical care, custody, or control of the child is located; or

(2) The county in which the child resides.

(c) The provisions of §§ 722, 724, 728(d)-(f) of this title and Chapter 7A of this title shall be applicable to proceedings filed under this chapter.

#### **§ 2404. Hearing procedure and notice requirements.**

(a) When a petition is filed under this chapter, the Court shall set a date for a hearing on the petition, and shall cause notice of time, place and purpose of the hearing to be served as required in this section.

(b) Notice of the time, place and purpose of the hearing shall be served upon the parent or parents, guardian or guardians, person or persons, DSCYF, or licensed agency holding parental rights at the respondent's last known address or to the address received in the petition.

(c) If the Court shall find that personal service within the State cannot be accomplished upon a party, the petitioner shall cause notice to be published in a newspaper of general circulation in the county where the respondent is most likely to be residing.

(d) Personal service at any time prior to the hearing shall be sufficient to confer jurisdiction upon the Court.

(e) Notice provided pursuant to this section shall constitute conclusive evidence of service and a hearing will then proceed at the time and date set, with or without the appearance of the parent or parents, guardian or guardians, person or persons, Department, or licensed agency holding parental rights so notified.

#### **§ 2405. Sanctions.**

The Court may impose such sanctions or remedies as the Court deems just and proper to ensure compliance with this chapter, including but not limited to:

(1) Extra visitation or contact with the child when it is in the child's best interest to do so;

(2) The payment of costs and reasonable counsel fees of the person applying for relief under this section;

(3) A fine in the discretion of the Court; or

(4) A term of imprisonment if a person is found to be in contempt of prior orders of the Court.

#### **§ 2406. Confidentiality of proceedings.**

All proceedings under this chapter and all records of such proceedings shall be held before the Court privately, except for reasons found sufficient to the Court, a hearing in any particular case may be made open to the public.

#### **§ 2407. Appeals.**

Appeal from any order or decree entered under this chapter shall lie to the state Supreme Court. No appeal shall lie from any order or decree under this chapter unless taken within 30 days from the date of such order or decree.

### **Subchapter II. Third-Party Visitation Proceedings**

#### **§ 2410. Persons eligible to petition for third-party visitation.**

(a) Unless otherwise specified in this chapter, any adult person or persons may file a petition for a third-party visitation order regarding a child not his, hers, or theirs against the child's guardians, parents, or DSCYF, provided that the adult person or persons can establish that the adult person or persons petitioning for visitation:

(1) Has a substantial and positive prior relationship with the child; or

(2) Is a relative of the child.

(b) Unless otherwise specified in this chapter, a guardian ad litem may petition for a third-party visitation order on behalf of the child against the child's guardian, parent, and/or DSCYF if:

(1) The adult person with whom visitation is sought consents to visitation with the child and;

(2) The adult person with whom visitation is sought:

a. Has a substantial and positive prior relationship with the child; or

b. Is a relative of the child.

(c) Any child, through a guardian ad litem, may file a petition seeking visitation with any other child with whom they have at least 1 parent in common.

(d) Notwithstanding subsections (a) through (c) of this section, if a parent's rights have been terminated in the child with whom a parent seeks third-party visitation, such person and their relatives are prohibited from filing for third-party visitation unless:

(1) More than 3 years have passed since the termination of parental rights order was entered and the child has not been adopted; or

(2) The adoptive parents are agreeable and their notarized consent is attached to the petition; or

(3) The adoptive parents have previously entered into a written notarized agreement or court-approved agreement for continued visitation and a copy of the agreement is attached to the petition.

**§ 2411. Contents of third-party visitation petition.**

Every petition for third-party visitation with a child filed under this chapter shall be verified and contain:

(1) Name and place of residence of the petitioner or petitioners;

(2) Name, sex, and date of birth of the child;

(3) A statement regarding the eligibility requirements set forth in § 2410 of this title;

(4) The name and address of the mother and the name and address of the father, alleged father, and/or presumed father. If either the name and/or address of any parent is not known, the petition shall include detailed information setting forth the efforts made to locate the parent;

(5) The name and last known address of the person or persons or organization holding parental rights, custody, and/or guardianship of the child; and

(6) A statement setting forth the grounds for visitation in § 2412 of this title.

**§ 2412. Grounds for persons obtaining third-party visitation with a child.**

(a) Prior to granting a third-party visitation order the Court shall, find after a hearing on the merits, or accept the agreement of the parties that:

(1) Third-party visitation is in the child's best interests; and,

(2) One of the following as to each parent:

a. The parent consents to the third-party visitation;

b. The child is dependent, neglected or abused in the parent's care;

c. The parent is deceased; or

d. The parent objects to the visitation, however the Court having given special weight to the parent's objection finds the visitation will not substantially interfere with the parent/child relationship.

Notwithstanding the above, if the child has 2 parents and the child is not dependent, neglected or abused in either parent's care, visitation may not be granted where both parents object.

(b) Prior to granting an order for third-party visitation between children, the Court shall find after a hearing on the merits, or accept the agreement of the parties, that the visitation is in the best interests of all children subject to the petition.

**§ 2413. Modification of orders granting third-party visitation.**

An order granting third-party visitation may be modified at any time if the best interests of any child subject to the order would be served by modification.